



**TESTIMONY OF HERB KELLEHER**

**EXECUTIVE CHAIRMAN, SOUTHWEST AIRLINES**

**JULY 12, 2006**

**BEFORE**

**The House Committee on Transportation & Infrastructure**

**Subcommittee on Aviation**

***THE WRIGHT AMENDMENT—A LOCALLY ACHIEVED COMPROMISE***

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**Southwest Airlines Supports the Local Compromise**

The 30-years war, waged on the European continent from 1618 to 1648, is, in longevity, exceedingly junior compared to the Dallas-Fort Worth airport struggle, waged in the Dallas-Fort Worth Metroplex for more than six decades.

Mr. Chairman and Members of the Subcommittee, I have, personally, been involved in litigation, in legislative struggles, and in cuss fights over Love Field since 1972—a period of 34 years. The fact that Southwest Airlines is here today—here with Fort Worth, DFW Airport, American Airlines, and the City of Dallas—indicates, I believe, that there must be hope for world peace.

Our unprecedented agreement arises from airport circumstances unprecedented anywhere else in the United States and, most probably, unprecedented anywhere else on earth. Many Members of Congress have, over the course of many years, urged a local resolution of the Wright Amendment issues. That has been done.

And peace, and good will, is the essence of our agreement—not to mention certainty, stability, and tranquility. Under the perseverant Leadership of the Mayors of Dallas and Fort Worth, who literally worked day and night to bring this “Peace Pact” into being, our swords are truly being beaten into plowshares. As with any difficult and complicated transaction—difficult and complicated by over 60 years of contention, of controversy, and of acrimony—all sides, all five parties, have been compelled to make sacrifices—to yield on firmly held positions; to moan and groan and agonize over decisions and mutual concessions. ***The only victor, the only sure fire winner from this locally achieved agreement, is the public***—the public citizens who will find it easier and far less expensive to travel to and from North Texas for business and personal reasons; the citizens who will reap vast economic benefits in their communities from enhanced travel and tourism, ***at a lower cost.***

***And, I should add, the public will reap those benefits without any cognizable injury to DFW International Airport or its far-flung domestic and international air service network.***

On behalf of the public, we stand shoulder to shoulder with American Airlines, with DFW Airport, and with the Mayors of Dallas and Fort Worth, in urging this Committee and the United States Congress to speedily approve legislation necessary to implement the locally achieved Wright Amendment compromise.

## **The History of the Fight Over Love Field**

For over six decades, Dallas and Fort Worth have struggled over airport issues. The history of the fight over Dallas Love Field is the history of Southwest Airlines.

Southwest was incorporated on March 15, 1967. On November 27, 1967, Southwest filed an application with the Texas Aeronautics Commission (TAC) to operate as a Texas intrastate carrier. Southwest elected to operate as an intrastate carrier because the U.S. Civil Aeronautics Board (CAB) of that day did not welcome new competition in the airline industry. The CAB mandated fare levels and did not permit price competition. Prior to the Airline Deregulation Act in 1978, there was no competition in interstate air service, on the basis of price, in the U.S. A consequence of that federal policy was that there were no new entrants—if a new airline could not compete against giant entrenched competitors on price, it was impossible to establish a toehold in a market.

Southwest did not fly for 51 months. Once the TAC unanimously approved Southwest's intrastate application on February 20, 1968, three airlines (Braniff, Trans Texas, and Continental), seeking to preserve their monopoly routes, filed a lawsuit and obtained a restraining order against the TAC, prohibiting it from issuing the necessary certificate under state law. That litigation continued through May 13, 1970, when a unanimous Texas Supreme Court ordered that Southwest could take to the skies. Seeking every chance to thwart Southwest through litigation (Southwest having no revenues at the time), the airlines took their pleas to the United States Supreme Court, which denied the appeal on December 7, 1970. Southwest Airlines thus became perhaps the only company in America that went all the way to the U.S. Supreme Court to obtain a business license over the opposition of its incumbent competitors.

Southwest began preparations for the start of service in earnest, with a planned startup of June 18, 1971. Our competitors were undeterred. They filed complaints with the CAB and, just days before service was to begin, returned to a state court and obtained another injunction stopping Southwest's flights. In an extraordinary session convened on June 17, 1971, the Texas Supreme Court again gave Southwest clearance for takeoff. Service began the very next day, with three airplanes flying to three cities.

The now proven model of point-to-point, frequent, low-fare service to close-in convenient airports was born. By then, the litigation (as was intended) had depleted all of Southwest's original financial capital, but not its will to survive.

In 1972, Southwest announced that it would not move to the new DFW Airport when it would open in 1974. Southwest was not a party to the local agreement to build DFW. Other airlines serving the North Texas market voluntarily signed contracts to fly exclusively from the new airport. Southwest did not. Love Field was better suited to Southwest's Customer needs than DFW, then and now.

This time, it was DFW and the Cities of Dallas and Fort Worth that filed suit. The purpose of that litigation was to evict Southwest from Love Field in Dallas, a foundation of Southwest's short haul, low cost, low fare niche. In a definitive opinion, the federal district court found, on multiple grounds, that the local agreements to build DFW did not, and legally could not, prevent Southwest Airlines from serving Love Field. City of Dallas v. Southwest Airlines Co., 371 F. Supp. 1015 (N.D. Tex. 1973). The DFW Parties were not prepared to accept defeat and appealed. On May 31, 1974, the Fifth Circuit affirmed the lower court's decision, upholding Southwest's unfettered right to serve Love Field. City of Dallas v. Southwest Airlines Co., 494 F.2d 773 (5<sup>th</sup> Cir. 1974). Still

refusing to concede, the DFW parties petitioned the Fifth Circuit for rehearing, which was denied. They appealed unsuccessfully to the U.S. Supreme Court. 419 U.S. 1079 (1974). They petitioned the Supreme Court for rehearing, to no avail. 420 U.S. 913 (1975). Seemingly, the fight over Southwest at Love Field had ended.

The “end” was short-lived. The DFW Parties then prevailed upon the Dallas City Council, after a massive lobbying effort, to pass an ordinance making it a crime for Southwest to use Love Field. A federal judge enjoined Dallas from enforcing the ordinance.

That still was not the end. The DFW Parties started litigation anew in a state court, seeking to relitigate their claim that Southwest could not fly from Love. A federal court found that this attempt to relitigate questions already decided was, in effect, an abuse of process and took the dramatic action of enjoining the state court—or any other court--from proceeding further. Southwest Airlines Co. v. Texas International Airlines, Inc., 396 F. Supp. 678 (N.D. Tex. 1975). The DFW Parties appealed to the Fifth Circuit. The Fifth Circuit, in an opinion remarkable for its clarity and conclusiveness, brought an end to the legal proceedings by declaring that the courts were now off limits to anyone seeking to evict Southwest Airlines from Love Field. Southwest Airlines Co. v. Texas International Airlines, Inc., 546 F.2d 84 (5<sup>th</sup> Cir. 1977). The DFW Parties petitioned for rehearing. The 5<sup>th</sup> Circuit said no. They appealed to the U.S. Supreme Court, which rejected the appeal. 434 U.S. 832 (1977).

### **The Significance of the Airline Deregulation Act**

Then something dramatic happened *outside a courtroom*. The U.S. Congress deregulated the airline industry in 1978. The Congress, observing the gigantic growth in passenger traffic in California and Texas, where intrastate

price competition was allowed, took the federal government out of the business of choosing which airports airlines could serve and at what price.

With respect to Southwest Airlines, the court-mandated stoppage of the concerted and coordinated legal campaign by the DFW Parties in 1977, coupled with the passage of the Deregulation Act in 1978, meant two very important things: 1) the courts said that no one could kick Southwest out of Love Field; and 2) the Congress said that Southwest could fly anywhere in the U.S. from Love Field.

When Southwest announced its intention to fly between Dallas and New Orleans pursuant to its rights under the Deregulation Act, the DFW Parties petitioned the CAB, seeking to deny Southwest the right to fly in interstate commerce out of Love Field. Again, they relied on the local agreement that produced DFW Airport. The DFW Parties lost before a CAB Administrative Law Judge, who ruled against them on every point in an exhaustive analysis on June 28, 1979. CAB Docket 34582. That decision was upheld in its entirety by the full CAB on September 28, 1979.

During this eleven-year period of nonstop litigation, some other interesting things occurred. Most noteworthy was the indictment of two airline competitors by a federal criminal grand jury for their role in the conspiracy to bankrupt Southwest. They both plead *nolo contendere*.

### **Judicial Defeats Lead to Political Intervention & the Wright Amendment**

Unsuccessful in the courts and administrative agencies, the DFW Parties decided upon a legislative strategy. They went back to Washington and obtained the support of House Majority Leader Jim Wright from Ft. Worth. If Leader Wright had not been from Fort Worth, or, being from Fort Worth, had not

been the House Leader, the Wright Amendment would never have come to pass.

Leader Wright attached an amendment to an unrelated bill that would have banned any airline from engaging in interstate air commerce from Love Field. Wisely, the U.S. Senate refused to go along. That obstructed passage of the bill to which Leader Wright had attached his language. Pressure built for passage of the larger bill, which dealt with international aviation. Ultimately Leader Wright himself made changes that the Senate accepted. That became the law we are here to discuss today, the federal law that limits service from Love Field to Texas and a few nearby states. The admitted legislative purpose was to protect DFW Airport and the airlines serving it from competition. We at Southwest often point out the ironic conflict between the Wright Amendment, on the one hand, and years of consistent court or agency decisions and the Airline Deregulation Act (passed just one year earlier), on the other hand. Thus, Love Field became, and remains, the only airport in America route-restricted by an Act of Congress for the sole purpose of protecting competitors (one airport and several airlines) from the rigors of the marketplace.

### **The Wright Amendment Was Designed to Stifle Southwest**

Although the Amendment was intended to stifle Southwest and cause it severe economic injury, Southwest's Employees managed to make the carrier a success in spite of the Wright Amendment. The proof of the law's anti-competitive intent may be found not only in the well-known geographical restrictions which limit where a plane can be flown, but in the more obscure "marketing and through ticketing" restrictions that are less well-understood.

These restrictions are a restraint on commercial free speech and force

Southwest, unintentionally, to deceive and confuse passengers. They are without precedent in commercial aviation, including during the regulated era. Under the Wright Amendment, Southwest cannot “offer or provide any through service . . .” and cannot “offer for sale transportation to or from . . . any point which is outside” the so-called Wright Amendment states. This means that even if a Customer is willing to make a stop within the permitted states and continue his or her journey on the same plane, or even a different plane, Southwest may not offer or market such service. An example: Southwest flies from Dallas to Little Rock and from Little Rock to Baltimore-Washington International (BWI). But Southwest cannot sell an individual through ticket to a Customer going from Dallas to BWI, even if the Customer is willing to make a connection to another plane in Little Rock. Another example: Southwest has a plane that goes from Dallas to Albuquerque where it sits for 25 minutes before continuing on to Las Vegas. But Southwest cannot sell a ticket to someone going from Dallas to Las Vegas with a stop in Albuquerque. That someone has to get off the airplane in Albuquerque.

In contrast, Members of Congress are familiar with the perimeter rule that limits the distance of nonstop flights from Reagan National. But a Member may purchase a ticket to destinations beyond the nonstop perimeter and take a one-stop flight on the same airplane to those destinations, something Customers cannot do on Southwest from Love Field under the Wright Amendment.

### **Effects of the Wright Amendment**

The Wright Amendment, by design, restricts competition. This restraint of trade has the unavoidable consequence of higher airfares and its corollary, reduced demand (fewer passengers). The Wright Amendment consumer penalty has been quantified. In a study commissioned by Southwest and

conducted by the Campbell-Hill Aviation Group, the benefits of repealing the Wright Amendment include:

- 3.7 million more passengers would travel, increasing passengers at both Love Field and DFW.
- Consumers would save nearly \$700 million annually compared to the higher airfares extracted from consumers by American Airlines at DFW as a result of its market power and the absence of competition.
- The total negative economic impact of the Wright Amendment on the entire United States exceeds \$4 billion each and every year.

### **People Understand and Dislike the Wright Amendment**

As a result of the seismic shift in travel habits brought about by deregulation, today's consumers have an expectation of air service options at affordable prices. Before deregulation, only the wealthy flew on commercial airlines. Today, air travel is accessible to virtually all Americans.

Like their fellow citizens across the country, Texans have become savvy air travel consumers. They dislike the Wright Amendment. One reason is that because of the Wright Amendment, many routes from DFW are monopoly markets with sharply higher fares. For example, based on 2004 full year data, American's average (not its highest) roundtrip fare between DFW and Omaha (a distance of 583 miles) was \$464. American's average fare between DFW and Albuquerque (a distance of 569 miles) was just \$220, or less than half of its average fare to Omaha. Why? Southwest can and does fly between Dallas Love Field and Albuquerque, New Mexico. Southwest cannot fly from Dallas Love Field to Omaha. Similar examples abound.

A scientific poll done by Public Opinion Strategies of Arlington, Virginia, found that North Texans favored repeal of the Wright Amendment by the astounding margin of 82% to 13%. When asked whether they supported the closure of Love Field, as some proposed, North Texans were even more opinionated, opposing such a move by a margin of 84% to 10%, with 70% STRONGLY opposing the closure of Love Field. Southwest had nothing to do with that poll.

The poll numbers are lopsided because the facts are lopsided. Consumers are sensitive to the fact that they pay more and have fewer options for air travel due to the Wright Amendment. They don't like it.

For years, few people outside Texas or Washington, D.C. knew what the Wright Amendment was. As they learned, opposition to it grew. Attached is Exhibit "A," which is a list of the newspapers and other community organizations supporting repeal of the Wright Amendment. In addition, 55 Members of the House of Representatives are co-sponsors of H.R.2646—legislation to repeal the Wright Amendment.

### **Why Change the Wright Amendment Now?**

Circumstances have changed dramatically since 1979:

- D/FW is the second biggest airport in the world in terms of land area and the third busiest in terms of flight operations. It is no longer an infant in need of pampering.
- Love Field is too small to be a significant threat to D/FW.
- Consumers across America are upset by the high cost of travel to and from the Dallas-Ft. Worth region and recognize that competition will cause prices to drop.

- Passenger traffic at Love Field, limited by the Wright Amendment to short flights, declined after 9/11 by approximately 24%, as the automobile reemerged as a serious competitor to the airplane. Accordingly, flights have been curtailed. Southwest has only 120 daily departures from Love Field, down from a pre-9/11 peak of 145.

## **Conclusion**

Southwest has not asked for bankruptcy protection, relief from pension obligations, subsidies, or federal loan guarantees. We have not asked our Employees for wage cuts or slashed their benefits. We have never had an involuntary furlough. We have shared profits with our Employees for 32 consecutive years. We have proven time and again that if competition flourishes, prices decline while consumers and communities profit. Southwest is a creature of the free market and of deregulation—the national policy with respect to commercial aviation. We ask that Congress restore to Southwest and its Customers what it gave the rest of the flying public in 1978—a competitive free airline market, which it improvidently allowed to be taken away in 1979.

Wright is Wrong. It is time for change. Southwest supports the local compromise and urges Congress to act upon it.

**SUPPORT FOR REPEAL OF THE WRIGHT AMENDMENT**

**NEWSPAPER EDITORIALS:**

ALBUQUERQUE JOURNAL (NEW MEXICO)  
AMARILLO GLOBE-NEWS (TEXAS)  
THE ARIZONA DAILY STAR (TUCSON)  
THE COLONY COURIER-LEADER (TEXAS)  
THE DAILY CAMPUS (SOUTHERN METHODIST UNIVERSITY-DALLAS)  
DALLAS BUSINESS JOURNAL  
THE DALLAS MORNING NEWS  
D MAGAZINE (DALLAS, TEXAS)  
EAST VALLEY (PHOENIX) TRIBUNE  
FORBES MAGAZINE (STEVE FORBES)  
THE HOUSTON CHRONICLE (TEXAS)  
INSIDE TUCSON BUSINESS (ARIZONA)  
LAS VEGAS SUN  
LOS ANGELES TIMES  
MIDLAND REPORTER-TELEGRAPH (TEXAS)  
OMAHA WORLD-HERALD (NEBRASKA)  
ORLANDO SENTINEL (FLORIDA)  
PITTSBURGH POST-GAZETTE  
ST. LOUIS POST-DISPATCH  
SAN ANTONIO EXPRESS-NEWS (TEXAS)  
ST. PETERSBURG TIMES (FLORIDA)  
SANTA MARIA TIMES (SANTA BARBARA COUNTY - CALIFORNIA)  
TAMPA TRIBUNE  
TEXAS MONTHLY  
THE UNION-LEADER (MANCHESTER, NH)  
VALLEY MORNING STAR (HARLINGEN, TEXAS)  
WALL STREET JOURNAL  
WASHINGTON POST

**COMMUNITY RESOLUTIONS/BUSINESS ORGANIZATION SUPPORT:**

ALAVARADO, TEXAS CHAMBER OF COMMERCE  
AIRCRAFT MECHANICS FRATERNAL ASSOCIATION (AMFA)  
AIR TRAVELERS ASSOCIATION

AL BIERNAT'S RESTAURANT (DALLAS, TEXAS)  
AMARILLO, TEXAS CHAMBER OF COMMERCE  
AMERICAN HOTEL AND LODGING ASSOCIATION  
AMERICAN SOCIETY OF TRAVEL AGENTS  
ANY EVENT INCORPORATED (CORPORATE MEETING/EVENT COMPANY- AUSTIN, TEXAS)  
BAY AREA HOUSTON ECONOMIC PARTNERSHIP (TEXAS)  
BEST PARK (LOVE FIELD PARKING GARAGE - DALLAS, TEXAS)  
BUGATTI RISTORANTE (DALLAS, TEXAS)  
CALIFORNIA HISPANIC CHAMBERS OF COMMERCE  
CALIFORNIA HOTEL AND LODGING ASSOCIATION  
CALIFORNIA LEGISLATURE, MAJORITY LEADER DARIO FROMMER  
CENTRAL CITY ASSOCIATION OF LOS ANGELES  
CITY OF MANCHESTER, NEW HAMPSHIRE  
DALLAS NORTHEAST CHAMBER (TEXAS)  
DEER PARK CHAMBER OF COMMERCE (HOUSTON, TEXAS)  
DESOTO, TEXAS CHAMBER OF COMMERCE  
DUNSTON'S STEAK HOUSE (DALLAS, TEXAS)  
ECONOMIC DEVELOPMENT COUNCIL OF THE GREATER SAN ANTONIO CHAMBER  
EDINBURG ROADRUNNERS (PROFFESTIONAL BASEBALL TEAM)  
EL PASO TX DIABLOS (PROFESSIONAL BASEBALL TEAM)  
EXPOTEX, LLC (EVENT MANAGEMENT PLANNING - AUSTIN, TEXAS)  
FLYING SAUCER RESTAURANT (DALLAS, TEXAS)  
FOX SPORTS NET  
FREEDOMWORKS (CITIZENS FOR A SOUND ECONOMY)  
GALVESTON, TEXAS CHAMBER OF COMMERCE  
GAYLORD HOTELS  
GOVERNOR OF MARYLAND - ROBERT L. EHRLICH, JR.  
GOVERNOR OF TENNESSEE - PHIL BREDESEN  
GRAND PRAIRIE CHAMBER OF COMMERCE (DALLAS, TEXAS)  
GREATER DALLAS PLANNING COUNCIL  
GREATER LOS ANGELES AFRICAN AMERICAN CHAMBER OF COMMERCE  
GREATER SAN ANTONIO CHAMBER OF COMMERCE (TEXAS)  
HARLINGEN, TEXAS AREA CHAMBER OF COMMERCE  
HARLINGEN CITY COMMISSION (TEXAS)  
HARLINGEN HISPANIC CHAMBER OF COMMERCE (TEXAS)  
HARLINGEN, TEXAS AIRPORT BOARD  
HEART OF LOS ANGELES YOUTH (INNER CITY YOUTH ORGANIZATION)  
HISPANIC CONTRACTORS ASSOCIATION DE TEJAS

**HOPKINS COUNTY (TEXAS)**  
**HOUSTON HISPANIC CHAMBER OF COMMERCE (TEXAS)**  
**HOUSTON INTOWN CHAMBER OF COMMERCE (TEXAS)**  
**HOUSTON ROCKETS (NBA TEAM)**  
**LANCASTER CHAMBER OF COMMERCE (TEXAS)**  
**LEE COUNTY PORT AUTHORITY (FLORIDA)**  
**LOVE FIELD ANTIQUE MALL (DALLAS, TEXAS)**  
**LOS ANGELES COUNTY ECONOMIC DEVELOPMENT CORPORATION**  
**MEXICAN-AMERICAN OPPORTUNITY FOUNDATION**  
**MIDLAND ROCK HOUNDS (PROFESSIONAL BASEBALL)**  
**MILPITAS CHAMBER OF COMMERCE**  
**NASHVILLE CONVENTION AND VISITORS BUREAU**  
**NATIONAL BLACK CHAMBER OF COMMERCE**  
**NATIONAL HISPANIC MEDIA COALITION**  
**NATIONAL TAXPAYERS UNION FOUNDATION**  
**NEVADA STATE LEGISLATURES**  
**NORTH DALLAS CHAMBER OF COMMERCE**  
**NOSOTROS (LATINO ACTOR ORGANIZATION – HOLLYWOOD, CA)**  
**PALM BEACH INTERNATIONAL AIRPORT**  
**PHILADELPHIA AVIATION DIRECTOR, CHARLES ISDELL**  
**PITTSBURGH INTERNATIONAL AIRPORT BOARD**  
**RALEIGH-DURHAM INTERNATIONAL AIRPORT (NORTH CAROLINA)**  
**ROCKWALL CHAMBER (TEXAS)**  
**RONALD MCDONALD HOUSE CHARITIES OF LUBBOCK, TEXAS**  
**RONALD MCDONALD HOUSE CHARITIES OF THE RIO GRANDE VALLEY , TEXAS**  
**ROYSE CITY, TEXAS CHAMBER OF COMMERCE**  
**ROUND ROCK EXPRESS (PROFESSIONAL BASEBALL)**  
**SALT LAKE CITY CHAMBER OF COMMERCE RESOLUTION (UTAH)**  
**SAN ANTONIO CONVENTION AND VISITORS COMMISSION (TEXAS)**  
**SAN ANTONIO HISPANIC CHAMBER OF COMMERCE (TEXAS)**  
**SAN ANTONIO HOTEL AND LODGING ASSOCIATION (TEXAS)**  
**SAN ANTONIO SPURS (NBA)**  
**SAN DIEGO COUNTY HISPANIC CHAMBER OF COMMERCE**  
**SAN FRANCISCO HISPANIC CHAMBER OF COMMERCE**  
**SAN JOSE DOWNTOWN ASSOCIATION**  
**SAN JOSE JAZZ SOCIETY**  
**SANTA CLARA CHAMBER OF COMMERCE (CALIFORNIA)**  
**SILICON VALLEY KOREAN AMERICAN CHAMBER (CALIFORNIA)**

**SOUTH FLORIDA HISPANIC CHAMBER OF COMMERCE**  
**SOUTH PADRE ISLAND CHAMBER OF COMMERCE (TEXAS)**  
**TAMPA INTERNATIONAL AIRPORT**  
**TEXAS PUBLIC POLICY FOUNDATION**  
**U.S. HISPANIC CONTRACTORS ASSOCIATION**  
**UTAH AIR TRAVEL COMMISSION**  
**VALLEY INDUSTRY AND COMMERCE ASSOCIATION (LOS ANGELES)**  
**WESTCHESTER/LAX- MARINA DEL REY CHAMBER OF COMMERCE (LOS ANGELES)**  
**WILMER, TEXAS CHAMBER OF COMMERCE**